IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APEAL FROM ORDER NO.687 OF 2000

The Fertilizer Corporation
of India Limited. ..Appellants.

V/s.

Surat Goods Transport
Service & Ors. ..Respondents.

Mr.Alok Bagla i/b M/s.Bagla Dandekar & Co. for appellants.

Mr.K.G.Parmar for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 18, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings on record.

2. Admit.

3. Mrs.Parmar waives notice for respondent No.1.

4. This appeal takes exception to the order passed by the District Judge, Thane dated 6th April, 2000 in Misc. Application No.133 of 1999 in S.C.Suit No.523 of 1992. By the said order the lower court has rejected the prayer for condoning the delay of about seven months in filing Appeal. The court below

has observed that the case made out in the application is not sufficient cause, as it is obvious that officers of the appellants did not pursue the matter diligently. This is the limited controversy. This finding is put in issue in the present appeal.

5. Having considered pleadings on record and the argument canvassed across the bar, I am inclined to allow this appeal. This is so because in the application which was filed for condonation of delay, in paragraph-3 explanation has been offered on behalf of the appellants. It is stated that they were fully dependent on the instructions of advocate who was appointed to appear in the matter. He was fully instructed regarding the preparation and filing of written statement. However, the advocate failed and neglected to proceed in the matter. It is also stated in the application that the appellants were not informed about the progress of the matter and inspite of the enquiries made with the advocate on telephone, no information about exparte decree passed against the defendant No.2 appellant was made known. It is only when the appellants made independent enquiry, were informed about the exparte decree passed against the appellants corporation. The explanation which has been offered on behalf of the

appellants, which is a government undertaking will have to be accepted on two grounds. Firstly, the appellant is Government Undertaking and some indulgence will have to be shown to such corporation, having regard to the routine administrative problems. In the present case, it has been stated on affidavit that officers of the corporation were not duly informed by the advocate who was instructed to appear and take necessary steps in the proceedings. In that sense, it is not a case of corporation or the officers of the appellant corporation being not diligent.

6. Secondly, it is well settled that for the mistake of advocate, litigant should not suffer. Indeed, it will be open to the appellants to take appropriate steps against the concerned advocate, who failed to give proper service, as a result of which exparte decree came to be passed. For the time being in the interest of justice, the delay of over seven months as has resulted in filing of the appeal against the exparte order passed in the suit will have to be condoned.

7. The appeal therefore, succeeds. The impugned Judgment and order is set aside and instead the

application Misc. Application No.133 of 1999 preferred by the appellant/defendant No.2 is allowed. The appeal preferred by the appellants to proceed on its own merits in accordance with the law. This indulgence is shown on condition that the appellants shall pay costs quantified at Rs.5,000/-(Rupees Five Thousand only) to the respondent No.1/original plaintiff within six weeks from today, which may be recovered from the concerned advocate if so advised.

8. Appeal disposed of on the above terms.